

401 KAR 47:080. Classification of solid waste sites or facilities.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt rules and administrative regulations for the management, processing, and disposal of solid wastes. KRS 224.40-305 requires that persons engaging in the storage, treatment, recycling, and disposal of solid waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. This administrative regulation sets forth the classification of solid waste sites or facilities for permitting purposes.

Section 1. Coverage. The permit administrative regulations of 401 KAR Chapter 47 establish provisions for the solid waste permit program under KRS Chapter 224. The administrative regulations of this chapter cover the basic permitting requirements, including application requirements, standard permit conditions, a presiting procedure, construction, modification, monitoring and reporting of any facility that manages solid waste. The administrative regulations of this chapter are part of a regulatory scheme implementing the solid waste provisions of KRS Chapter 224. The solid waste permit program relies upon technical requirements which are contained in 401 KAR Chapter 48. The technical administrative regulations are used by the cabinet to determine what conditions are applicable to each permit and to determine compliance with KRS Chapter 224. Administrative regulations governing solid waste planning are set forth in 401 KAR Chapter 49 and the enforcement and compliance monitoring requirements in 401 KAR Chapter 40.

Section 2. Permit Types. This chapter provides for several types of solid waste site or facility permits which are classified based on the waste managed and the facility type.

(1) Contained landfill permit. Contained landfill is the category of solid waste site or facility which may accept for disposal all nonhazardous solid waste including residential, commercial, institutional, industrial, and municipal waste, shredded tires, household hazardous waste, limited quantity generator hazardous waste and nonhazardous spill cleanup residue. The technical requirements for contained landfills are found in 401 KAR 48:050 and 401 KAR 48:070 through 401 KAR 48:090.

(2) Construction/demolition debris landfill permit. Construction/demolition debris landfill is the category of solid waste site or facility for the disposal of solid waste which results from the construction, remodeling, repair and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm-related cleanup. Such waste includes, but is not limited to: bricks, shredded or segmented tires, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, tree stumps, limbs, saw dust, leaves, yard waste, paper, paper products, metals, furniture, insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, electrical wiring and components containing no liquids or hazardous metals that are incidental to any of the above and other inert waste as approved by the cabinet. Asbestos-containing materials may be accepted only if the permit application includes procedures approved by the cabinet to handle these materials. Construction/demolition debris landfills shall not be for disposal of garbage, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, PCB-containing waste, hazardous material spill residues, limited quantity generator hazardous waste, any waste regulated by 401 KAR Chapter 31 and 32, whole tires, liquids, drums, fuel tanks, or other nonpermitted waste. The technical requirements for construction/demolition debris landfills are found in 401 KAR 48:050 and 401 KAR 48:060.

(3) Residual landfill permit. Residual landfill is the category of solid waste site or facility designed

and operated to accept for disposal a limited number of industrial wastes or residues which are fully characterizable. It also includes residuals from air and water pollution control devices and energy generation which are codisposed in a mining operation. In addition, residual landfills may accept sludge, and special wastes. The technical requirements for residual landfills are found in 401 KAR 48:050 and 401 KAR 48:170.

(4) Landfarming permit. Landfarming is a category of solid waste site or facility where solid waste is applied to the soil surface or injected into the upper layer of the soil to improve soil quality or provide plant nutrients. Solid wastes suitable for this purpose include, but are not limited to, food processing waste, municipal sewage treatment plant sludge, and municipal water treatment plant sludge. The technical requirements for landfarming facilities are found in 401 KAR 48:200.

(5) Permit-by-rule. Permit-by-rule is a category of solid waste site or facility permit for certain solid waste management practices listed in 401 KAR 47:150 which are deemed to have a permit without the owner or operator having made application to the cabinet. The practices and conditions of the permit-by-rule are specified in Section 1 of 401 KAR 47:150 and include limited tire disposal, on-site disposal of land clearing wastes, on-site disposal of construction and demolition wastes, sawdust piles, pumpings, oil production brine pits, gas and oil drilling, mud pits, and asphalt residues, waste piles, surface impoundments with a KPDES permit, automobile and truck recycle and salvage yards, beneficial reuse of solid wastes.

(6) Registered permit-by-rule.

(a) Registered permits-by-rule are a category of solid waste site or facility permit providing for the storage, treatment and disposal of solid waste that includes:

1. Commercial recycling centers;
2. Transfer stations;
3. Construction/demolition debris landfills of one (1) acre or less, when the wastes are not disposed at the site of generation;
4. Solid waste incinerators that have a rated capacity of more than one (1) ton per day including those using refuse derived fuel;
5. Sludge giveaway programs, composted sludge and other composted material programs in accordance with 401 KAR 48:200;
6. Landfarming of class I sludges in accordance with 401 KAR 48:200;
7. Septic tank pumpings if in compliance with the Cabinet for Human Resources administrative regulations and the waste is not applied to within three (3) feet of the surface of the land unless a method to reduce pathogens has been utilized in accordance with 401 KAR 48:200; and
8. Convenience centers.

(b) Owners and operators of a registered permit-by-rule site or facility are deemed to have a permit without further action by the cabinet. Owners and operators of a registered permit-by-rule site or facility shall prevent adverse effects on human health and the environment as identified in 401 KAR 47:030 and implement any necessary corrective action under Section 8 of 401 KAR 48:300.

(c) Operators shall submit a registration on a form prescribed by the cabinet as specified in Section 3 of this administrative regulation or 401 KAR 48:200, and shall operate in accordance with the standards specified in 401 KAR 48:200 or 401 KAR 47:110, and 401 KAR 47:030.

(7) Emergency permit. An emergency permit is a category of solid waste site or facility permit for the short-term storage or disposal of solid waste generated from a storm or flood event or other emergency as specified by the cabinet. The requirements for emergency permits are found in 401 KAR 47:150.

(8) Research, development and demonstration permit. A research, development and demonstration permit is a category of solid waste site or facility permit issued for a short period to demonstrate unproven technology. The permit procedures for this category can be found in 401 KAR 47:150.

(9) Residential landfill permit. A residential landfill permit is a category of solid waste site or facility

construction permit which was issued prior to the effective date of this administrative regulation. Landfills in this category may continue to operate under the prior issued permit provided they notify the cabinet in accordance with Section 4 of this administrative regulation and comply with the operating standards for contained landfills as specified in 401 KAR 48:090, or construction/demolition debris landfills as specified in 401 KAR 48:060. The facility may close in accordance with Sections 4 and 5 of this administrative regulation or submit an application in accordance with the technical standards in 401 KAR Chapter 48.

(10) Inert landfill permit. An inert landfill permit is a category of solid waste site or facility permit which was issued prior to the effective date of this administrative regulation. Landfills in this category may continue to operate under the prior issued permit provided they notify the cabinet in accordance with Section 4 of this administrative regulation and comply with the operating standards for construction/demolition debris landfills as specified in 401 KAR 48:060 or residual landfills specified in 401 KAR 48:170. The facility may close in accordance with Sections 4 and 5 of this administrative regulation or submit an application in accordance with the technical standards of 401 KAR Chapter 48.

Section 3. Notification Procedures for Registered Permit-by-rule Facilities. All solid waste sites or facilities in existence on the effective date of this administrative regulation that require registered permits-by-rule as specified in Section 2(6) of this administrative regulation shall, no later than October 1, 1990, submit a form prescribed by the cabinet.

(1) After submission of the registration form, the cabinet shall acknowledge receipt in writing. Facility owners or operators with registered permits-by-rule shall comply with the environmental performance standards of 401 KAR 47:030 and any condition of the registered permit-by-rule specified in 401 KAR 47:110.

(2) The operator of such facilities may continue to operate the facility without further application to the cabinet subject to the conditions specified in 401 KAR 47:110.

(3) Existing facilities required by this chapter to register with the cabinet which close prior to October 1, 1990, may close without submittal of the registration form.

Section 4. Solid Waste Facilities with Permits Issued Prior to the Effective Date of this Administrative Regulation. (1) Within six (6) months of the effective date of this administrative regulation, any person that possesses a solid waste landfill or landfarming permit issued before the effective date of this administrative regulation under KRS Chapter 224 shall file a notice with the cabinet which states the operator's intent to close or meet the revised technical requirements by July 1, 1992.

(2) After July 1, 1992, no person shall operate a solid waste landfill or landfarming facility unless one (1) of the paragraphs of this subsection is satisfied and the owner or operator has complied with subsection (1) of this section:

(a) The facility, owner or operator possesses a permit issued under 401 KAR Chapters 47 and 48;

(b) The facility, owner or operator possesses a permit modified to meet the technical standards of 401 KAR Chapter 48;

(c) An application for a permit modification which addresses each of the applicable technical standards for closure or conversion to a different classification under 401 KAR Chapters 47 and 48 has been filed with the cabinet within twelve (12) months of the effective date of this administrative regulation and the cabinet has not yet rendered a decision with respect to the complete application; or

(d) The facility, owner or operator has requested and received approval from the cabinet in accordance with subsection (3) of this section.

(3) Residential and contained landfills with permits issued prior to the effective date of this administrative regulation may operate until July 1, 1995, if the owner or operator complies with:

- (a) Subsections (1), (2), and (5) of this section;
- (b) The construction quality control plan which has been approved by the cabinet or meets the requirements of 401 KAR 48:080, Section 4 to document the existence or placement of:
 - 1. At least twelve (12) inches of soil with a maximum permeability of 1×10^{-7} centimeters per second or its equivalent;
 - 2. A leachate collection system installed in a manner approved by the cabinet;
 - 3. A groundwater monitoring system meeting the requirements of 401 KAR 48:300; and
- (c) The installation of scales and equipment as specified in 401 KAR 48:070, Sections 6 and 13.
- (4) Solid waste sites or facilities with permits issued prior to the effective date of this administrative regulation may close prior to July 1, 1992, under the closure requirements specified in Section 5 of this administrative regulation without complying with the requirements of 401 KAR Chapter 48 provided:
 - (a) The permittee has provided the notice as required in subsection (1) of this section;
 - (b) A complete closure plan which complies with the closure requirements of Section 5 of this administrative regulation is submitted to the cabinet within twelve (12) months of the effective date of this administrative regulation or one (1) year prior to last intended receipt of waste whichever occurs first;
 - (c) The operator maintains a valid operating permit including the bond required by KRS 224.40-650 prior to and during closure; and
 - (d) The groundwater monitoring data for the facility includes the parameters listed in 401 KAR 48:300, Section 11.
 - (e) The owner or operator performs corrective action if required under 401 KAR 48:300.
- (5) Residential and inert landfills permitted prior to the effective date of this administrative regulation shall comply with the following operating requirements:
 - (a) Residential landfills shall meet the operating requirements for contained landfills in 401 KAR 48:090 or construction/demolition debris landfills in 401 KAR 48:060.
 - (b) Inert landfills shall meet the operating requirements for construction/demolition debris landfills in 401 KAR 48:060 or residual landfills in 401 KAR 48:170.
- (6) No placement of the low permeability soil liner component shall be initiated at any landfill, or portion thereof, unless it meets the requirements of subsection (7) of this section or 401 KAR Chapters 47 and 48.
- (7) Operation may be authorized for any portion of a landfill in accordance with Section 4(3) of this administrative regulation for which a low permeability soil liner component had been approved prior to January 16, 1990. Any soil construction shall be certified using the requirements of Section 4 of 401 KAR 48:080.

Section 5. Closure Requirements for Sites Closing under Section 4(1) of this Administrative Regulation. (1) Residential landfills, contained landfills and inert landfills permitted prior to the effective date of this administrative regulation, closing pursuant to the notice in Section 4(1) of this administrative regulation, shall comply with the following:

- (a) All records shall be submitted to the cabinet;
- (b) A closure plan shall be submitted to the cabinet that shall contain the following requirements:
 - 1. A description of the access controls;
 - 2. A description of the covering activities and procedures including frequency of cover, total volume and source of borrow material available, and total estimated volume and source of cover required (final, daily and interim);
 - 3. The proposed revegetation program, including provisions for liming, fertilization, seed types and seeding schedule, erosion control during early growth period, and interim cover vegetation program;

4. A final cover maintenance program covering the entire site and lasting two (2) years beyond closure, to include erosion control, reseeding, refertilization and growth control; and

5. A detailed plan for closure of the landfill in accordance with KRS 224.40-650 along with an estimate of closure costs; and

(c) Closure requirements.

1. Those areas of a landfill that shall receive no additional deposits of solid waste within 365 days of the last placement of waste shall receive final cover. A minimum final cover of two (2) feet shall be required in addition to any daily and interim cover required. All contained and residential landfills shall have the lower six (6) inches of the final cap contain soil with a permeability of 1×10^{-7} centimeters per second;

2. Before earth-moving equipment is removed from the site, an inspection of the entire site shall be made by an authorized representative of the cabinet to determine compliance with approved plans and specifications. The owner or operator shall submit a closure schedule based on the approved closure plan thirty (30) days prior to the last intended use of a solid waste facility;

3. Final cover shall be graded as provided in the approved closure plan in a manner to prevent ponding. For a period of two (2) years, the surface of final cover shall be maintained at the proper elevation as specified in the approved closure plan;

4. Final cover shall be revegetated. After grading, final cover shall be fertilized as necessary, seeded, and/or planted with legumes, perennial grasses or other vegetation according to the approved closure plan. The owner or operator shall be required to repeat this process until adequate vegetation is obtained to ensure soil stabilization as specified in the approved closure plan;

5. Other necessary corrective work required by the cabinet, if any, shall be performed before the landfill is accepted as closed and financial responsibility funds released;

6. The owner or operator of a residential or contained landfill shall record a notice that shall in perpetuity notify any potential purchaser of the property of the location and time of operation of the facility, and a statement that future disturbance of this area shall only occur after an examination of potential gas or leachate migration problems. Such notice shall be recorded in accordance with state property law prior to acceptance of final closure of the landfill.

(2) Landfarming facilities permitted prior to the effective date of this administrative regulation closing under Section 4(1) of this administrative regulation shall comply with the following:

(a) All records shall be submitted to the cabinet; and

(b) Food chain crops restrictions of 401 KAR 47:030 shall be met including deed notice if applicable.

(3) Residual landfills permitted prior to the effective date of this administrative regulation closing under Section 4(1) of this administrative regulation, shall comply with the following:

(a) The closure plan shall specify the function and design of the final cover for the facility. The closure design shall assure compliance with the applicable environmental performance standards in 401 KAR 47:030 and shall reflect consideration of:

1. The type and amount of waste in the facility;

2. The mobility and expected rates of migration of the waste;

3. The site location, topography and surrounding land use, and final site use;

4. The climatic conditions in the area;

5. The characteristics of the cover material including erodibility, slope, length of run of slope, and type of vegetation on the cover; and

6. The geological and soil profiles and surface and subsurface hydrology of the site.

(b) All records shall be submitted to the cabinet.

(c) Closure requirements.

1. A residual landfill shall be closed in a manner that shall assure compliance with the environmental performance standards in 401 KAR 47:030. The closure shall include the placement of a fi-

nal cover over the facility as specified in the approved design of the site;

2. Any necessary corrective work required by the cabinet shall be performed before the residual landfill is accepted as closed and financial responsibility funds released;

3. The owner or operator of a residual landfill shall record a notice that shall in perpetuity notify any potential purchaser of the property of the location and time of the operation of the facility, nature of the waste placed in the site and a caution against future disturbance of the area. Such notice shall be recorded in accordance with state property law prior to acceptance of final closure of the landfill; and

4. Closure care maintenance. A residual landfill shall be maintained for two (2) years following the closure of the site in a manner that complies with the environmental performance standards in 401 KAR 47:030 and in accordance with any approved closure care monitoring and maintenance plan approved by the cabinet.

Section 6. Solid Waste Facility Applications Pending on the Effective Date of This Administrative Regulation. (1) Unless the provisions of subsection (3) of this section are applicable, applications pending as of the effective date of this administrative regulation shall be revised to meet all requirements of 401 KAR Chapters 47 and 48 prior to being determined technically complete.

(2) Applications that have been determined to be administratively complete prior to the effective date of this administrative regulation and have published the notices required by KRS 224.40-310 shall complete the public information process commencing with Section 12(3) of 401 KAR 47:140.

(3) Applications for solid waste sites or facilities upon which a preliminary determination was made and a hearing pursuant to KRS 224.10-420 commenced prior to the effective date of this administrative regulation shall be subject to and reviewed in accordance with the procedural and substantive requirements in effect at the time the preliminary determination was made if prior to the effective date of this administrative regulation the proposed solid waste site or facility had completed construction pursuant to a permit issued by the cabinet. In the event an application processed under this subsection results in issuance of a permit, the permit shall thereafter be subject to all provisions of these administrative regulations applicable to permits issued prior to the effective date of these administrative regulations. (16 Ky.R. 1727; Am. 2178; 2348; eff. 5-8-90.)